IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5860 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : D.D.SINHA AND K.J.ROHEE, JJ.

DATED : FEBRUARY 1, 2006

Heard Mrs. Deshpande, learned Counsel for the petitioner, and Shri Mishra, learned Counsel for the respondents.

The petition is directed against the order dated 14.7.2004 passed by the Central Administrative Tribunal whereby original application filed by the petitioner against the order of dismissal from service came to be rejected.

The learned Counsel for the petitioner has challenged the order of dismissal primarily on the ground that the charge-sheet, which was issued to the

petitioner for the alleged mis-conduct was by Shri Saha, who was Deputy Accountant General (Administration) and he had himself conducted enquiry and at the relevant time, was also a Disciplinary Authority. It is contended that as per guidelines, unless it is unavoidable, the Disciplinary Authority should refrain from being Enquiry Officer and, therefore, procedure adopted by the respondents in the present case while conducting departmental enquiry is inconsistent with the guidelines and hence, cannot be sustained. Consequently, the order of dismissal passed against the petitioner is also not sustainable in law.

Shri Mishra, learned Counsel for the respondents, has submitted that the above referred contentions canvassed by the learned Counsel for the petitioner, are not correct. In the instant case, though charge-sheet was issued by Shri Saha, who at the relevant time was also a Disciplinary Authority and he had conducted the departmental enquiry. however, Shri Saha has not passed an order of dismissal. On the other hand, after conducting

enquiry, report was submitted to another Officer, who was the Disciplinary Authority and it is the other Officer, who has passed the order of dismissal and, therefore, the contention canvassed by the learned Counsel for the petitioner in this regard is not correct.

We have considered the contentions of the learned Counsel for the parties and perused the impugned order passed by the Central Administrative Tribunal. The observations in para (8) of the impugned order reveal that though charge-sheet was issued by Shri Saha, who also conducted departmental enquiry, however, the order of dismissal is not passed by him, but by another Officer, who at the relevant time was the Disciplinary Authority. The guidelines referred to hereinabove do not prohibit completely Disciplinary Authority from being an Enquiry Officer. However, this cannot be done in a routine case and only in unavoidable circumstances.

It is true that in the instant case, no specific circumstances were placed before the

Tribunal to show that because of unavoidable circumstances Shri Saha, who was Disciplinary Authority, conducted the enquiry. However, in our considered view, that by itself is not sufficient to vitiate either departmental enquiry conducted against the petitioner or finding recorded by the Tribunal particularly when order of dismissal is passed by the Disciplinary Authority other than Shri Saha, who had conducted enquiry. In that view of the matter, no case is made out by the petitioner for interference. The petition is, therefore, dismissed.

JUDGE JUDGE

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